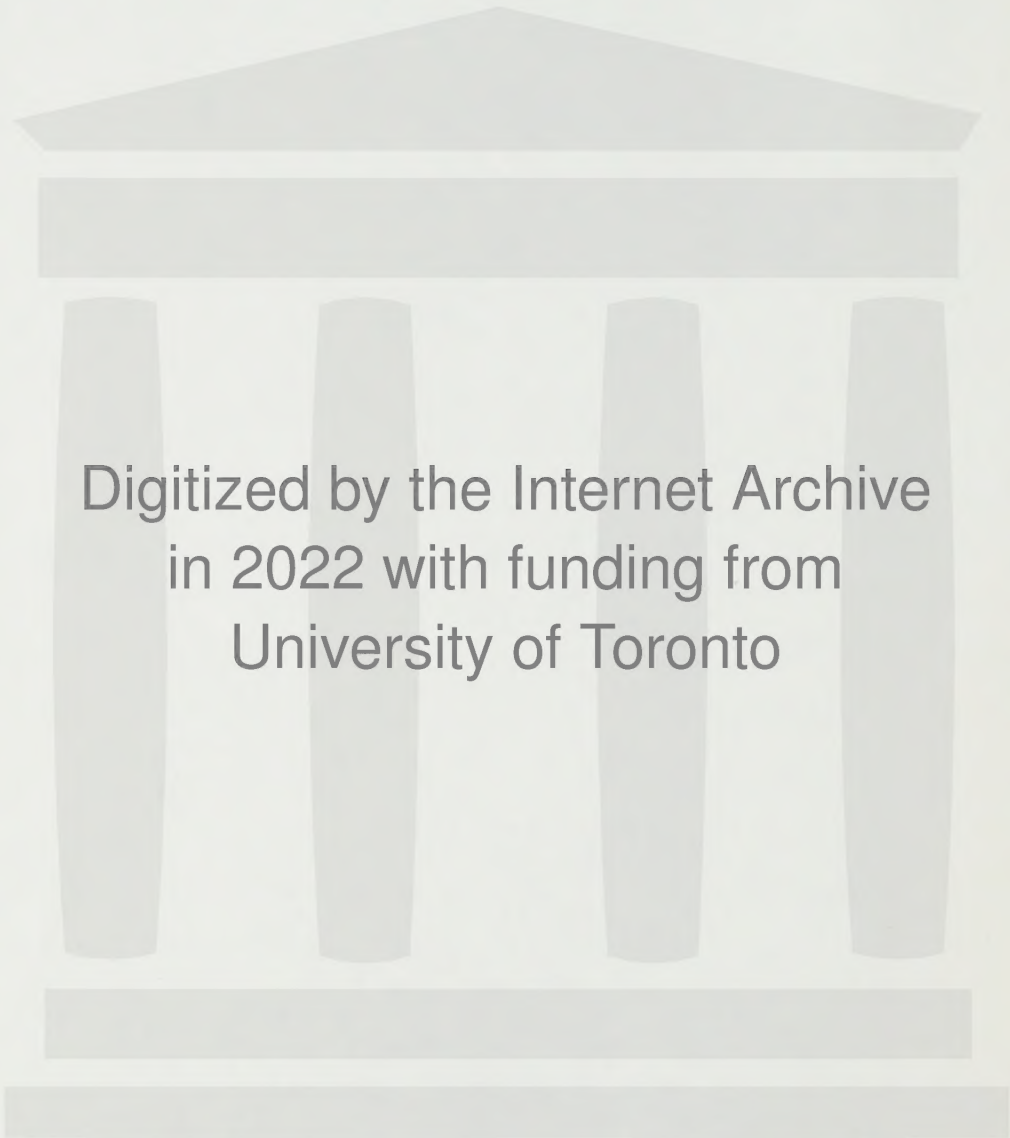
Ontario. Labour Relations Board

Analysis of applications for declaration...



LOCK-OUT UNLAWFUL UNDER LABOUR RELATIONS LEGISLATION IN ONTARIO

1. Statutory Background

Authority to declare that a strike or lockout is unlawful, as distinct from the granting of consent to the institution of a prosecution against a person calling or authorizing or engaging in an unlawful strike, is vested in the Board by The Labour Relations Act, 1950. The relevant sections were amended in 1954 and now read as follows:-

> 59. Where a trade union or a council of trade unions calls or authorizes a strike or employees engage in a strike which the employer or employers' organization concerned alleges is unlawful, the employer or employers' organization may apply to the Board for a declaration that the strike is unlawful and the Board may make such a declaration.
>
> 60. Where an employer or employers' organization calls or authorizes a lock-out which any of the employees or the trade union or the council of trade unions concerned alleges is unlawful, any of the employees or the trade union or the council of trade unions may apply to the Board for a declaration that the lock-out is unlawful and the Board may make such a declaration.

2. Procedure and Policy

Applications under sections 59 and 60 of the Act, where the work interruption is in progress at the time of the filing of the application, are now listed for hearing within as short a time as possible after the date of the filing of the application. The time for filing a reply is abridged under the Board's power to abridge times prescribed by the Rules where it is deemed necessary

or convenient in the public interest. Hearings of all applications of the types under discussion, as is the case with all charges of unfair practices, are formal - witnesses are sworn and subject to cross-examination. The policy of the Board in dealing with such applications is set out in the Board's decision in the Ball Brothers Case, (1957) C.C.H. Canadian Labour Law Reporter ¶16091:

> ..... It is our considered opinion that the Legislature has vested in the Board a discretion as to whether a declaration under section 59 should or should not be made. In other words, the Legislature recognized that there might be cases in which, although a strike or a lockout is unlawful, the Board may refrain from issuing a declaration to that effect. In the exercise of this discretion, the Board has generally held that a declaration should not be issued in cases in which the strike has been settled before the application comes on for hearing. In order to effectuate the purpose which section 59 was designed to serve, the Board, acting under Rule 19(3), has adopted the practice of abridging the time for filing a reply to such applications and it has also abridged the time that normally elapses under the Rules before a case is heard. By adopting this procedure, the Board has been able to deal with such applications within a few days of the filing of the application.
>
> There are in our opinion several situations in which a declaration under section 59 might well be issued even though the application comes on for hearing after the strike has been settled: (i) where a union has called a number of unlawful strikes as part of a general pattern for gaining its objectives in defiance of the law; (ii) where, although the particular unlawful strike which provided the occasion for an application has been settled, the employer affected thereby has a reasonable fear that his operations will again be interrupted in similar fashion...
>
> It may not be amiss to point out that the principles applicable to section 59 would also be applicable to the exercise of the Board's discretion under section 60 which confers upon the Board authority to issue a declaration that a lockout is unlawful.....

Statistical Analysis

Table 1 shows the administrative load of the Board in respect of applications for a declaration that a strike or lockout is unlawful, and Table 2 provides information on some aspects of time lapse in such applications.

Table 1

Applications for Declaration that Strike and Lockout Unlawful and their Disposition

September 1, 1950 - March 31, 1957.

Applicant	Totals	Withdrawn Before Hearing	Withdrawn After Hearing	Granted	Dismissed
Sept.1, 1950 - Mar. 31, 1952					
Employer	5	3	1	1	
Trade Union	2			1	1
Apr.1, 1952 - March 31, 1953					
Employer	7	3	1	1	2
Trade Union	2	1			1
Apr.1,1953 - March 31, 1954					
Employer	14	2	2	6	4
Trade Union	1				1
Apr.1, 1954 - March 31, 1955					
Employer	28		5	3	20
Trade Union	2		1		1
Apr.1,1955 - March 31, 1956					
Employer	19	5	11	1	2
Trade Union	3	1			2
Apr.1, 1956 - March 31, 1957					
Employer *	31	11	12	6	2
Trade Union	2		1	1	
Sub-totals					
Employer	104	24	32	18	30
Trade Union	12	2	2	2	6
Totals	116	26	34	20	36

* Corrected figure. In the Statistical Tables on Operations of The Ontario Labour Relations Board and on Conciliation Services in the Department of Labour, presented to the Committee on September 23, 1957, the number of applications granted and dismissed in the period April 1, 1956, to March 31, 1957, is shown as 7 and 1 respectively.

...ays between Application for Declaration and Hearing by The Labour Relations Board

September 1, 1950 - March 31, 1957

...al Year ...ng ...ch 31,	Days between Application and Hearing (Median)	Days between Application and Hearing (Range)	Remarks
1951	51		One application.
1952	37	24 - 60	
1953	25	23 - 44	
1954	14	6 - 18	
1955	6	6 - 39	Five applications, all in one "case", account for upper end of range.
1956	7	7 - 21	Two applications in one "case" account for upper end of range. All other applications were heard within 7 days.
1957	7	5 - 33	One applicant requested postponement of hearing and this accounts for the 33 days at upper end of range. In another case, an employer named approx. 200 unions in one application and it took 13 days to hear all. All other applications were heard within 8 days.

... = Receipt of application and the day of hearing of application ... Saturdays and Sundays are all included in making the ...